

# EXHIBIT 1

TO PLAINTIFF'S STATEMENT OF UNDISPUTED MATERIAL  
FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY  
JUDGMENT AGAINST DEFENDANT ERIC MONCADA

1 UNITED STATES DISTRICT COURT  
2 FOR THE SOUTHERN DISTRICT OF NEW YORK  
3 CIVIL ACTION NO. 12-cv-88791 (CM)

4 UNITED STATES COMMODITY  
5 FUTURES TRADING COMMISSION,

6 Plaintiffs,

DEPOSITION OF  
ERIC MONCADA

7 vs.

8 ERIC MONCADA; BES CAPITAL,  
9 LLC; and SERDIKA, LLC,

10  
11 Defendants.  
12  
13

14 T R A N S C R I P T of the stenographic

15  
16 notes of THERESA L. TIERNAN, a Certified Court Reporter

17  
18 and Notary Public, taken at the offices of CFTC, 140

19  
20 BROADWAY, NEW YORK, NEW YORK, on TUESDAY, JULY 2, 2013,

21  
22 commencing at 10:05 a.m.  
23  
24  
25

A P P E A R A N C E S:

COMMODITY FUTURES TRADING COMMISSION

BY: ANDREW L. RIDENOUR, ESQ.,

KENNETH W. MCCracken, ESQ.,

AND

BRIAN WALSH, ESQ. (VIA VIDEO CONFERENCE.)

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ERIC MONCADA

BY: MR. RIDENOUR       4

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person who ended up being my boss, Serdika, it was Highland Capital.

Q And that's Emil Dontchev?

A Yes.

Q Was Serdika formed after you started working with Emil Dontchev?

A I believe so, yes.

Q And where was Serdika located?

A New York.

Q On the 30th floor of this building?

A No.

Q Where was it located in New York?

A Over on Rector.

Q And how long were you with Serdika?

A Till 2010.

Q And what is BES? When did you start with BES?

A I don't remember when we started BES, but it was during the time I was working at Serdika.

Q And does the beginning of 2009 sound like the right time frame from when that started?

A Sounds about right.

Q And how long did BES trade until or when did it trade until?

1 MONCADA

2 And were you trading an account in the  
3 name of Highland Capital Group?

4 A I don't remember what the account name was.

5 Q Do you know what futures commission  
6 merchant that account was through?

7 A Merrill Lynch.

8 Q And you said that after you had started  
9 working with Emil Dontchev, that Serdika was formed.

10 What type of entity was Serdika?

11 A Proprietary trading group, as far as I know.

12 Q What's your understanding of what a  
13 propriety trading group is?

14 A It's a -- it's a group that takes their  
15 proprietary capital and trades securities.

16 Q Somebody trading on their own money?

17 A And, yeah, it's no advisories, it's not  
18 advising any clients or anything like that, it's not  
19 doing any sort of brokerage. It's just trading on  
20 their own.

21 Q Did you have a job title at Serdika?

22 A Not really. I just traded for them.

23 Q What were your duties with Serdika?

24 A Trading futures, checking my statements,  
25 that's about it.

1 MONCADA

2 A Uh-huh.

3 Q Can you describe how that was  
4 calculated?

5 A The trade profits were just based on the  
6 futures trades, and whatever was in my account was  
7 the profits that I was responsible for, and I would  
8 get paid out of that.

9 Q So it was tied to just one trading  
10 account? Whatever profits happened on one trading  
11 account?

12 A Yeah.

13 Q Did you get any benefits at Serdika?  
14 Health insurance or anything like that?

15 A No, I don't think so. I don't think I did.

16 Q Did you have any sort of written  
17 contract with Serdika?

18 A Yeah, I had a pretty simple agreement to  
19 trade with them.

20 Q It was written out?

21 A I believe so.

22 Q Do you have a copy of this?

23 A I don't know if I do. It was quite a while  
24 ago.

25 Q Did you ever have to put any of your



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own money into Serdika?

A I don't remember if I did put money into Serdika. At some point in 2010 Emil asked me for money to cover some downdraws of equity, and I don't know if he put it in Serdika or BES, but it was for my equity in the -- in my accounts.

Q To cover a down draw of equity, you said?

A Yeah.

Q What do you mean by that?

A I had trading losses and my equity had been depleted.

Q So Emil asked you to put in money to cover your trading losses?

A Yeah.

Q Do you know how much you put in?

A No, I don't.

Q Do you know if it was more than a million?

A No, it wasn't a million.

Q Do you know if it was more than a half a million?

A I don't remember.

Q The money that you put in in 2010, you

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think that might have been it. I didn't really --  
yeah, as far as I knew it was Emil's company.

Q Do you know if Highland Capital had an  
ownership interest in it?

A I do not.

Q Do you know if Uriel Cohen had an  
ownership interest in it?

A I don't know what arrangement they had.

Q And to go over to BES Capital.  
Was BES a proprietary trading firm?

A Yes.

Q And that's with your same  
understanding, that it's trading with its own money?

A Yes.

Q What does BES stand for?

A It stands for Billy Eric Serdika.

Q And the Eric is you?

A Yes.

Q And Billy is William Brandeis?

A Correct.

Q And Serdika is Serdika, LLC.

A Uh-huh.

Q Yes?

A Yes.

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Q Did you have a job title at BES?

A No, it was just understood that I was a trader there.

Q What were your job duties at BES?

A They were pretty much the same as at Serdika. I was responsible for trading futures and handling the account, making sure that there weren't any problems with the trades.

Q Were you a member of BES?

A Yes.

Q When was BES formed?

A Didn't you ask me that?

Q Oh, yeah, I did. So I'm sorry.

You had said that you thought BES was formed sometime around?

A The end of 2009.

Q Who set it up?

A Uriel Cohen, myself, Emil Dontchev, and William Brandeis.

Q How were you compensated from BES?

A From the trading profits.

Q What arrangement did you have setting out what the compensation would be products?

A The trading profits would be split with

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2 trading activity collectively, so we basically  
3 merged all of our accounts and traded together all  
4 commodities, all the commodities were trading.

5 Q And once you had put all those  
6 commodities, all that trading then together, what  
7 was the arrangement between you and Mr. Brandeis?

8 A We would split everything. Based on our  
9 percentage, we would split the profits.

10 Q So would you and Mr. Brandeis -- okay,  
11 so I guess kind of back it up.

12 So there's a hundred percent of the pie  
13 of profits.

14 A Uh-huh.

15 Q And a certain percentage goes to you  
16 and Mr. Brandeis, and then of that percentage that  
17 goes to you and Mr. Brandeis how would you split  
18 that portion?

19 A 50/50.

20 Q Okay. You said that as you put more  
21 equity into BES, you and Mr. Brandeis got a larger  
22 share of the profits?

23 A As we left more equity, we got a bigger  
24 percent of properties.

25 Q So BES was profitable, and you just

1 MONCADA

2 left a portion of the profits in the company and  
3 that became equity in it?

4 A Correct.

5 Q Correct?

6 A Yes.

7 Q What was the -- and you said that the  
8 share that went to you and Mr. Brandeis increased  
9 from 55 percent.

10 Do you know what it increased to?

11 A 80 percent.

12 Q Do you know when it went up to  
13 80 percent?

14 A I don't remember exactly when.

15 Q Did you have any sort of written  
16 employment agreement with BES?

17 A Yeah, I think there was a -- an employment --  
18 a pretty simple employment document.

19 Q Do you have a copy of that?

20 A Somewhere in a file cabinet an Oklahoma I  
21 probably do.

22 Q Did you ever contribute any capital to  
23 BES?

24 MR. ASCHE: Other than what he's  
25 testified to?

1 MONCADA

2 A Yeah, other than what you just mentioned  
3 about the 200,000 that I put into -- that I gave to  
4 Emil.

5 Q But that was -- that was at the end of  
6 2010.

7 A Yeah.

8 Q At the beginning, when BES was first  
9 formed, did you put any capital into BES?

10 A Yeah, Billy and I, William and I put in  
11 175,000 each. I think it was 175,000 each.

12 Q And what was the purpose of that  
13 contribution?

14 A That was to start the energy trading at BES.

15 Q Did anyone else put in capital at the  
16 beginning?

17 A I believe Uriel and Emil put in some, put in  
18 equity so that we could begin trading.

19 Q Do you know how much they put in?

20 A No.

21 Q After the 175,000 at the beginning, and  
22 other than the 200,000 sometime in 2010, did you put  
23 any other cash into BES?

24 A Not that I remember.

25 Q Did you get any funds from BES?

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2 A What do you mean by "more frequently"?

3 Q Well, I guess, how often would you work  
4 outright positions in CBOT wheat back in October of  
5 '09?

6 A I don't remember exactly what orders I worked  
7 in October, but I would have hundreds of trades a  
8 day, some of them were outright and some of them  
9 were spreads. Hundreds, if not thousands.

10 Q What did you do more frequently,  
11 though, outright or spreads?

12 A I'm not really sure. I traded -- I traded  
13 both all day.

14 Q Did you trade outright positions daily?  
15 For, I guess, every day you were in the market would  
16 you put in an outright position?

17 A I would consider outright positions daily.  
18 Whether or not I put them on, I would have to look  
19 back at the data. But I generally had a view of the  
20 market, every day, I had an idea.

21 Q What would your view of the market be  
22 based on?

23 A Based on weather, news, outside markets,  
24 meaning most of the global commodity marks, equity  
25 markets, what the other grains are doing.

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2 events like the equity markets, the global equity  
3 markets. The other grains tend to have some pretty  
4 big moves then they would affect wheat as well.

5 Q Do you recall ever taking a view on a  
6 market in wheat, in CBOT wheat, based off of any of  
7 these other markets in late 2009?

8 A Yeah.

9 Q What sort of time horizon view would  
10 you take from events in other markets?

11 A It would depend on what exactly I saw.

12 Q If you saw gold going up, how would  
13 that impact your view of the wheat market?

14 A It would have to be more than just something  
15 like gold going up. I would to be looking at  
16 several other factors.

17 Q And what other types of news? Because  
18 you also mentioned news as something that would need  
19 you to take a view on the market.

20 What types of news would lead to you  
21 take a view on the wheat market?

22 A Well, there was general reports that came out  
23 on the condition of the wheat market. There was, as  
24 we mentioned, weather. There was always rumors  
25 about the wheat market.



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2 order in another market of a similar volume?

3 A Well, if I didn't get filled, I probably  
4 would have done anything in the other market.

5 MR. MCCracken: I'm sorry. I couldn't  
6 hear.

7 A If I didn't get it filled, I probably  
8 wouldn't do anything in another market.

9 MR. ASCHE: If he can't get it filled,  
10 he probably wouldn't do anything in another market.

11 Q And for outright positions, do you  
12 recall in October 2009 placing any orders of 200  
13 lots or greater for purposes of getting an outright  
14 position?

15 A I don't recall exactly what my orders are. I  
16 don't know. I don't know my order history from  
17 2009. I don't really know exactly what sizes I put  
18 in.

19 Q Why would you have put in an order for  
20 200 lots or greater?

21 MR. ASCHE: Didn't you ask him that  
22 question?

23 Q If you're trying to get an outright  
24 position, what would lead you to want to get an  
25 outright position of 200 lots or greater in CBOT

1 MONCADA

2 wheat?

3 A Theoretically, if I wanted an outright  
4 position of 200 lots, if I wanted to put in an order  
5 of 200 lots or greater, the order mechanism would be  
6 rewarding to placing a large order that the CBOT had  
7 to place at that time.

8 Q Rewarding to place a large order? What  
9 do you mean by that.

10 A Meaning because of the order mechanism being  
11 a percentage. What is it? Part of the fills that  
12 would happen would be the larger orders would get  
13 the bigger percentage of fills that came in at that  
14 price.

15 Q Can you explain that a little bit more?

16 A How?

17 Q Well, I mean, you're saying larger  
18 orders would get more fills, how would they get more  
19 fills.

20 A The -- the Exchange had an order mechanism  
21 that went beyond first in first out. It -- a larger  
22 order would get a percentage of a fill that came at  
23 that price based on its size.

24 Q So you're saying that you would want to  
25 put in larger orders to increase your likelihood of

1 MONCADA

2 getting a fill?

3 A That's a possibility, yes.

4 Q Do you recall ever using that rationale  
5 in placing a larger order in October of 2009?

6 MR. ASCHE: Do you mean specific  
7 examples?

8 Q Do you recall ever doing that, for  
9 having that as being a thought process in October of  
10 2009?

11 A I was certainly aware that that was a -- a  
12 method that could be used. I'm not sure if during  
13 those dates, during the day, during October, that if  
14 I did it or not. I'd have to look back, you know,  
15 and remember exactly what the situation was.

16 Q So you're not sure if you ever used  
17 that rationale in October of 2009?

18 A I'm not. I'm not sure.

19 Q Would there be any other reasons for  
20 you to put in an order of 200 lots or greater?

21 A Not that I can think of.

22 Q So the two reasons that you believe  
23 would be either to get a large outright position  
24 based on a view of the market or because you believe  
25 that it might have gotten you a better chance of

1 MONCADA

2 getting a partial fill.

3 Is that correct?

4 A Yes.

5 Q Are there any other reasons that you  
6 would have placed a large lot order in October of  
7 2009?

8 A Putting a large order in a market, it also --  
9 I'm trying to think how to word this. It could be  
10 used to kind of signal -- send a signal that you're  
11 looking for liquidity.

12 Q Why would you have sent the signal that  
13 you were looking for liquidity?

14 A Because I was trying to -- I was trying to  
15 trade a large lot.

16 Q So I guess this would fold into the  
17 first reason you were talking about. You were  
18 looking to execute a large outright order.

19 A Uh-huh.

20 Q And yes?

21 A Yes.

22 Q And you were putting in these large  
23 orders to signal to the market that you were looking  
24 for liquidity, correct?

25 A That's correct.

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2 Q Are there any other reasons why you  
3 would have put in a large lot order in October of  
4 2009?

5 A Not that I could think of right now.

6 Q And when you say you can't think of  
7 anything right now, you've already given  
8 investigative testimony to the CFTC, and the CFTC  
9 has filed a complaint against you relating to these  
10 large lot orders.

11 So just to be clear, you have known  
12 about the allegations for quite sometime, and so in  
13 looking back on it these are the only two reasons  
14 that you can think of?

15 MR. ASCHE: Three reasons.

16 Q One, to hold -- to get an outright  
17 order, which you may put in a large lot order to  
18 get -- to signal other market participants for  
19 liquidity. Or secondly, because you think it will  
20 help you increase your likelihood of getting fills.

21 MR. ASCHE: Object to the form.

22 Q Are those the two reasons that you may  
23 have entered large lot orders in October of 2009?

24 A Well, the first one was two reasons.

25 Q Okay. So the first one was two

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2 reasons. Okay. So you're saying -- I just want to  
3 make sure, okay? So we're looking at three reasons;  
4 one, is you wanted an outright position because you  
5 had a view on the market, correct?

6 A Yeah.

7 Q Two, you believe that the order  
8 mechanism gave you an advantage if you put in a  
9 large lot order, correct? Yes?

10 A Yes.

11 Q And, three, that you were signaling to  
12 the market that you were looking for liquidity,  
13 correct?

14 A Correct.

15 Q Correct. And there are no other  
16 reasons that you can think of that you would put in  
17 a large lot order?

18 A Not that I can think of.

19 Q And just, I guess, as a shorthand for  
20 the rest of this deposition, when I talk about --  
21 when I use the term "large lot order," I'm going to  
22 be referring to something that's 200 lots or  
23 greater.

24 Can we agree to that shorthand?

25 A That's fine.

1 MONCADA

2 A If the market moved either in my favor or  
3 against me, it would change my view of what I  
4 thought of the market.

5 Q So you're saying that you would develop  
6 a view of the market based off of news or weather,  
7 or what was happening in other markets, develop  
8 an -- or build an outright position, and then if the  
9 market moved, that would change your view of the  
10 market?

11 A It could change my view of the market. Other  
12 markets moving could also change my view of the  
13 market. As I mentioned earlier, it's a -- sort of  
14 a -- it's a constant reassessment of what's going on  
15 and what factors are affecting the markets.

16 Q Earlier we had talked about margin  
17 requirements.

18 If you were to build an outright  
19 position of 200 lots, what would the margin  
20 requirement on that position then be?

21 A It would be 200 lots times whatever the  
22 margin requirement was for a future.

23 Q Which you believe the initial margin  
24 requirement was somewhere around \$2,000 and the  
25 maintenance margin requirement was some discount to

1 MONCADA

2 that?

3 MR. ASCHE: I think he said it was a  
4 thousand or more, but I don't think he said it was  
5 2,000.

6 MR. RIDENOUR: He said it was around  
7 2,000.

8 A I said it was somewhere around there. I  
9 don't -- I don't remember exactly what it was.

10 Q So if you were to build an outright  
11 position of 200 lots, you would have to be able to  
12 post margin to cover that position?

13 A If you want to do keep it overnight, yeah.

14 Q Did you ever build an outright position  
15 of 200 lots or more and keep it overnight?

16 A Yeah.

17 Q And you posted margin to cover that?

18 A Yeah.

19 Q Do you recall ever doing that in  
20 October of 2009, building an outright position of  
21 over 200 lots?

22 A I don't remember. I know I did in 2009. I  
23 don't know if it was in October or when, but I  
24 know -- I know I have definitely taken positions  
25 like that.



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2 A Yeah, I mean, it's -- you can. You have  
3 every right to change your mind on a order.

4 Q Well, there's a difference between  
5 changing your mind on a two lot order and changing  
6 your mind on a 200 lot order.

7 A Well, the only difference is that the  
8 distinction you guys made by calling it a large lot  
9 order.

10 I didn't really -- what's the difference  
11 between a two lot or a 200 lot order? You tell me.

12 Q Why were you canceling these orders?

13 A Because I'm constantly re-evaluating and  
14 adjusting to the market conditions.

15 Q Is that the only reason you would  
16 cancel?

17 A It's the only reason I can think of.

18 Q So the only reason that you would  
19 cancel a large lot is because you re-evaluated what  
20 the market was doing in October of 2009?

21 A Yeah.

22 Q How quickly can you react to market  
23 news?

24 A I react -- when I was trading I reacted  
25 pretty quickly to all little fluctuations that I saw

1 MONCADA

2 in the markets.

3 Q What sort of reactions would you have?

4 A Anything from just changing my gut feeling,  
5 to -- what do you mean, what sort of reactions?

6 Q I mean, you're talking about reacting  
7 to something in the market as being the reason that  
8 you would cancel a large lot order.

9 So what --

10 A Yeah, reacting to something in the market,  
11 changing my mind, changing my opinion, changing the  
12 feeling that I -- you know, maybe I just didn't want  
13 to hold a -- maybe I changed my mind on taking a  
14 position at that time, you know, not wanting to  
15 expose myself to the market running through me and  
16 decided not to.

17 Q And what would cause to you change your  
18 mind?

19 A The market conditions.

20 Q What market conditions would those be?

21 A Depends on the situation.

22 Q Well, tell me all of them.

23 A What do you mean? Tell you all of what?

24 Q I'm talking about changing your mind  
25 based off of market conditions.

1 MONCADA

2 Q Could you tell based off of the market  
3 data whether or not that was the rationale for  
4 entering a large lot order or for taking on a  
5 outright position?

6 A I couldn't tell by the statements, no.

7 Q Could you tell by the market data?

8 A No, I would need to really look at what my  
9 positions were intraday, and still I wouldn't -- you  
10 know, it would be hard to remember what my thought  
11 process was back then. I would have to -- I'd have  
12 to review the situation.

13 Q We talked about some of the rationales  
14 that you had given for placing large lot orders back  
15 in October of 2009. One of those was that you said  
16 you were trying to send a signal to the market.

17 What do you mean by that?

18 A I said, it's possible to send a signal with a  
19 large lot order. It's a way of asking for  
20 liquidity.

21 Q Do you recall specifically using that  
22 rationale in placing large lot orders in October of  
23 2009?

24 A I don't -- I don't remember if I did in  
25 that -- in October or not, but I know it's a -- it's

1 MONCADA

2 a -- it's a method that's used.

3 Q Is it a method that you ever used?

4 A Yeah, I think so.

5 Q How often?

6 A I don't know how often. I would have to look  
7 at the situation and try to remember if that's what  
8 I was doing or not.

9 Q Did you ever talk to anyone else at BES  
10 or Serdika about this rationale?

11 A Not that I remember.

12 Q If you were trying to send a signal to  
13 the market, what size order would you put in?

14 MR. ASCHE: Object on the form. You  
15 can answer.

16 A In what situation?

17 Q Well, what situations would you put in  
18 an order of over 200 lots with that rationale in  
19 mind?

20 A If I wanted to buy over 200 lots and the bid  
21 and offer wasn't at the price that I was comfortable  
22 buying.

23 Q Were you trying to induce someone to  
24 lift your order from the book?

25 A That would be a rational way to do that.

1 MONCADA

2 his intention was this morning. He had alternative  
3 intentions. One was to --

4 MR. MCCracken: Again --

5 MR. RIDENOUR: No speaking objections.

6 MR. ASCHE: You asked me a question. I  
7 can't answer your question without speaking, and  
8 unless you know American sign language.

9 MR. MCCracken: I appreciate that.

10 MR. ASCHE: In which the case the  
11 reporter would be unable to take it.

12 MR. MCCracken: If you believe he  
13 answered the question this morning, the record would  
14 so reflect. Go ahead and ask your question.

15 MR. ASCHE: Well, he's not going to  
16 answer it again is what I'm saying.

17 BY MR. RIDENOUR:

18 Q Were there any times where you did not  
19 intend to fully fill a large lot order?

20 A I would have to -- I would have to look at  
21 the situation. I don't --

22 Q Do you ever recall placing --

23 MR. ASCHE: Let him finish his answer.  
24 At least, if you ask him a question several times,  
25 he should be allowed to answer it.

1 MONCADA

2 MR. RIDENOUR: And if you ask a yes or  
3 no question, you would assume that you would get a  
4 yes or no answer.

5 MR. ASCHE: Well, you make all the  
6 assumptions you want, but he's the witness.

7 Q Do you recall ever placing a large lot  
8 order that you did not intend to fully fill?

9 MR. ASCHE: That's a different  
10 question.

11 He's asking you for your recollection  
12 of the specific order.

13 A I would have to look at each time I placed  
14 one and the situation, I don't recall.

15 Q So is that a no, you do not recall?

16 A I don't recall.

17 Q Okay. You said that it could depend on  
18 the situation, that there may be times where you did  
19 not intend to fully fill?

20 A I never said that.

21 Q But you just said that, to tell whether  
22 or not you intend to do fully fill something, you'd  
23 have to look at the situation, correct?

24 A Any time I placed an order, I would look at  
25 the -- I would look at the market condition and the

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2 MR. ASCHE: I let you ask him whether  
3 he ever recalls ever not intending to have an order  
4 filled, and he said he didn't recall. So that's  
5 about as far as you're going to get with him now.

6 Q So you started saying something about  
7 your understanding of the way that the market  
8 matched its orders, and you seem to be saying that  
9 sometimes you put in orders to try to -- a large lot  
10 orders to try to get a priority in filling.

11 Could you describe that a little bit  
12 more for me?

13 A The market has a size priority function in  
14 it, in the matching order. If you are one of the  
15 bigger bids or offers in the engine, whether you're  
16 first or last, you could potentially get a partial  
17 fill.

18 Q Did you ever -- is there a shorthand  
19 that we can use for this rationale just for  
20 simplicity's sake?

21 A Size priority.

22 Q Size priority, okay. Let's talk about  
23 size priority.

24 Do you ever recall, or do you recall  
25 placing any orders, large lot orders on

1 MONCADA

2 E-mail that we're aware of, so, I guess, we would  
3 ask that if you specifically --

4 MR. ASCHE: We'll look for it.

5 MR. MCCracken: If you would, thank  
6 you. And you didn't recall, I'm sorry, you didn't  
7 recall when you got this E-mail? You don't remember  
8 a month or a year or anything when you would have  
9 gotten this E-mail?

10 MR. ASCHE: He said 2008.

11 A I thought it might be 2008, but I don't know.

12 MR. MCCracken: Okay. Thank you.  
13 That's fine.

14 BY MR. RIDENOUR:

15 Q When would you place large lot orders  
16 to try to get a size priority?

17 A What do you mean by "when"?

18 Q What market conditions or conditions in  
19 your own trading, what would lead you to --

20 A It's very situational. I mean, it's just  
21 depending on what, you know, what was going on the  
22 market, depending on, you know, how I felt about,  
23 you know, trading a big position.

24 Q Why would you put in a large lot order  
25 to try to get size priority?



1 MONCADA

2 A I don't recall exact situations. I don't  
3 recall exact situations on when I would do it.

4 Q Do you recall ever doing it, though?

5 A Yeah.

6 Q But you don't recall why you would have  
7 done it, or what would have been going on in the  
8 market that caused you to do that?

9 A No, not specifically.

10 Q Did you ever put in large lot orders to  
11 get size priority because you were having difficulty  
12 filling your smaller orders?

13 A Yeah.

14 Q Do you specifically recall doing it for  
15 that reason?

16 A Yeah.

17 Q Do you recall using that reason in  
18 October of 2009?

19 A I don't -- I don't know. I don't know  
20 exactly when I did it, but I know I have been.

21 Q Do you recall doing that while you were  
22 trading for BES or Serdika?

23 A Yeah.

24 Q Do you recall specifically if you used  
25 that reason while trading for the BES account?

1 MONCADA

2 Q Did you ever use icebergs?

3 A Yeah.

4 Q While you were trading at BES and  
5 Serdika in October of '09?

6 A Yes.

7 Q When would you use those?

8 A I would use them -- I would use them. There  
9 are many situations, I guess, where I'd use them.  
10 I'd use them if the market was -- I don't know if  
11 the market was falling, and I -- I don't know. I  
12 would use them whenever it just felt like it was a  
13 better way to get -- might have a better chance of  
14 getting filled.

15 Q Why would it be a better chance of  
16 getting filled?

17 A I don't know. A lot of times I would  
18 experiment to see if the order was getting filled in  
19 a better fashion than other orders.

20 Q Did you ever find that using iceberg  
21 has helped you get a better fill?

22 A I didn't have enough data to really make it a  
23 determination on whether I thought it was better or  
24 not.

25 Q What's the advantage of using an

1 MONCADA

2 iceberg? Why would it result in getting a better  
3 fill sometimes?

4 A If I had -- if I had put an iceberg in and  
5 somebody tried to sweep the market, the iceberg  
6 would get filled in that repeated fashion, and the  
7 person that's sweeping the market would fill it. I  
8 don't know how to explain the advantage. It's just  
9 a different style of order.

10 Q And it's one that doesn't involve  
11 showing the full order to the rest of the market,  
12 correct?

13 A Yeah.

14 Q Well --

15 A It's a deceptive order.

16 Q What are the reasons that somebody  
17 would use an iceberg and not want to show that full  
18 order size to the rest of the market?

19 A They're trying to either -- they're trying to  
20 hide the size of the order.

21 Q Why would you try to the size of an  
22 order?

23 A That's just you wouldn't -- you don't always  
24 want to show exactly what you're trying to do.

25 Q Why not?

1 MONCADA

2 A Because people can lean on your order if the  
3 market has a big -- the markets have a big move,  
4 people could lean on your order, and kind of use  
5 your order as a crutch to do either, to spread or to  
6 fill your order.

7 Q What do you mean "lean on your order"?

8 A Meaning, if I think all the markets are going  
9 up and there's a large offer, you would look at that  
10 offer and say, you know, "If it starts to trade, I'm  
11 going to take the end of it. I'm going to take the  
12 last. I'm going to get some of it," meaning market  
13 forces are pushing everything up. You see a big  
14 offer, it keeps the market down for a while, and  
15 then it goes. The market continues up.

16 Q You're saying a large offer would  
17 impact orders on the buy side?

18 A People would -- people lean on these orders.  
19 You see an order, and they -- what was the question  
20 again?

21 Q So a large offer, would that -- would  
22 that have an impact on the -- you're talking about a  
23 reason somebody might want to use an iceberg because  
24 otherwise if you had a large offer out there it  
25 might -- and the price was moving up, then it might

1 MONCADA

2 impact the way that the demand on the buy side was  
3 reacting?

4 A It could. It's possible.

5 Q Did you ever see that happen?

6 A See what happen? The large order impact the  
7 price of the market?

8 Q Yes.

9 A I've seen it, yeah.

10 Q How large is large in your mind of the  
11 wheat market?

12 A Well over 500.

13 Q You don't think 500 is large?

14 A No, I think over 500 is large.

15 Q You don't think something under 500  
16 could impact the rest of the market?

17 A I think a two lot could impact the rest of  
18 the market. I think it just depends on what the --  
19 to what degree it impacts.

20 Q Do you think a 500 lot order would have  
21 more of an impact than a two lot order?

22 A It seems like a -- it could. It depends on  
23 the market.

24 Q Are there any times where a two lot  
25 order, all things being equal, would have less of an

1 MONCADA

2 people --

3 MR. MCCracken: But you aren't holding  
4 your Blackberry and swapping --

5 MR. ASCHE: He's allowed to do that.  
6 He's allowed to talk to people during the  
7 deposition. He's allowed to talk to people at  
8 lunch. He's allowed loud to talk to people during  
9 the break, and right now we're on a break.

10 MR. MCCracken: No, she's still taking  
11 everything down, because he didn't say we went off  
12 the record.

13 MR. ASCHE: Fine. He said we were on  
14 break from questions.

15 A He said he wanted some time to pull out some  
16 information, and I pulled out my phone.

17 Q Okay. We are still on the record.

18 I'm going to hand this -- this is  
19 Exhibit 6. It has some highlighted stuff on there.  
20 I'm going to give that one, that's the original, I'm  
21 going to give to Mr. Moncada because the highlights  
22 just came out better on that one.

23 This document is an excerpt from Bates  
24 number WHEAT-AF-000218.

25 MR. ASCHE: Again, we've never seen

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2 these documents with Bates numbers on before this  
3 deposition.

4 (Exhibit marked Exhibit 6 for  
5 identification.)

6 MR. RIDENOUR: Well. The file name has  
7 the Bates number on it. We gave it to you two  
8 months ago. So if you haven't figured out how to  
9 use your computer, that's not my fault. However,  
10 I'm going to hand you -- that CD holds all of the,  
11 just for convenience sake, to mark it as an exhibit,  
12 I put all of the spread sheets that we're going to  
13 look at on the CD.

14 MR. ASCHE: I appreciate it.

15 Q Okay. So this is an excerpt from it.  
16 I'm going to tell you what this excerpt is.

17 Up on the screen on the right we have  
18 the full document. You can scroll through it to  
19 provide additional data, background, everything, but  
20 the excerpt right here is a 12-page document.

21 What this is is an excerpt starting at  
22 record number 187601, and going to record number  
23 220089. This is all activity attributed to user  
24 name E. Moncada in account A5187 on 10/27/2009.  
25 This is all -- I have not changed any data in this

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excerpt from the original. The only thing I did was filter field 47, which you can see field 47 on page 8, I'm sorry, I'm sorry, on page 9s, field 47, and I could show you up on the main screen here, you have -- it's going to have one of two values, either order SRC equals normal OS. Or order SRC equals Autospreader. I filtered out the ones saying order SRC equals Autospreader, otherwise all the data is same between the record numbers that I identified. There are obviously a bunch of columns at the top, some of them are self-explanatory, some of them we may want to talk about just so that you can understand all the things.

The columns across the top, record number, those are sequential. That's just the, based on my understanding of what this document is, and we can certainly talk to Advantage because they're the ones who generated the report, if you have any questions about what each column means, date, times, pretty self-explanatory, Exchange, all of these are CBOT-1 or CBOT-I.

Let me know if you have any questions about specific ones, but I guess I'll just go ahead and tell you what this is.



1 MONCADA

2 This is the log of all information that  
3 went through your TT platform for this account on  
4 October 27th, and then I just took an excerpt from  
5 that. This one would include data as to whether it  
6 was buy or sell, quantity, whether it was good to  
7 close, get till day, iceberg, et cetera, et cetera.

8 MR. ASCHE: Who produced this document?

9 MR. RIDENOUR: Advantage. Advantage  
10 produced the master one, which is up on the screen.

11 MR. ASCHE: Right. SRS key is what?  
12 Is that the commodity.

13 MR. RIDENOUR: SRS key, I'm not  
14 entirely sure. The last three characters on it are  
15 ZWZ.

16 MR. ASCHE: Right.

17 Q Which, Mr. Moncada, your understanding  
18 of what ZW would mean? CBOT wheat?

19 A Yeah, it could be.

20 Q Because if you look over that there's a  
21 column for product, or prod, it says ZW.

22 A Uh-huh.

23 Q And then right next to it is expiry.  
24 It says Dec. 09. So ZWZ would be December CBOT  
25 wheat from my understanding.

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2 So if you have any questions, I'm sure  
3 this is a lot to look at. You want to just take a  
4 break and take a look at it for a minute?

5 A No, I've looked at it.

6 Q Okay. All right. Now, on page 2  
7 towards the top of the page there's a line, and line  
8 of data says "add, sell," and then under "order  
9 quantity" it says "302." And then at the end it  
10 says the price was 524. If you look over at the  
11 left side the time that this was entered was 9:36  
12 and 16.757 seconds.

13 A Okay.

14 Q This is record. The record number on  
15 the left-hand side is 192766.

16 So also assuming this printout to be a  
17 true reflection of what happened in your -- in your  
18 account, does that look like you put in a 302 lot  
19 order?

20 A It sure looks like it.

21 Q Okay. And then you go down a few  
22 lines, record number 193115, at 9:36:17.554 seconds  
23 was an entry saying, "delete sell 203."

24 Does that look like you deleted that  
25 302 lot order?

1 MONCADA

2 canceled after .8 seconds there was another sell  
3 order, this time for 402 lots. That was entered at  
4 9:36:26.742 seconds, and then if you look three  
5 lines down it was canceled at 9:36:27.570 seconds.  
6 The record number on the orders 115785. So the  
7 record number on the cancellation it was 196121.

8 If you looked at the difference between  
9 those two times that, again, is approximately .8  
10 seconds. So can you -- can you tell from this data  
11 why you would have canceled an order after only .8  
12 seconds?

13 A It looks like, again, I put the order in, I  
14 didn't full it, it canceled.

15 Q Would it appear that you were trying to  
16 fill this entire order?

17 MR. ASCHE: Objection to the form of  
18 the question.

19 Q Do you believe that you were trying to  
20 fill this entire order?

21 A That's hard for me to recall what my feelings  
22 were back then, but it looks like I was willing to  
23 sell 402 futures at 523.75.

24 Q Does it look like you were trying to  
25 send a signal to the market in putting these orders

1 MONCADA

2 out?

3 A I don't recall. I don't know. I'd have to  
4 look at what the market looked like. And I don't --  
5 I don't remember what the market -- what was going  
6 on in the wheat markets or any of the markets back  
7 then.

8 Q Now, up on the screen right now, I just  
9 changed this over to a different document. The file  
10 number on this is MASKED\_ZWZ9\_10272009. This  
11 document was produced by the CME to the CFTC. It is  
12 all orders or all messages going into the Globex  
13 machine. The date of this document is for the trade  
14 day of October 27th, 2006. You'll notice that the  
15 column date up there actually says 10/26/2009, and  
16 the time is approximately 5:00 p.m.

17 Mr. Moncada, when does the overnight  
18 session for wheat start, do you know?

19 A Back then?

20 Q Yeah.

21 A I think it started at 7:00 p.m.

22 Q Okay.

23 MR. ASCHE: That may be five central  
24 time.

25 A Yeah. That would be 6:00 p.m.

1 MONCADA

2 lots. And it looks like the price is dropping.

3 What's the question now?

4 Q So what's the purpose of all these  
5 large lot orders?

6 A I don't have -- I don't know. I would have  
7 to look at the situation. It looks like I'm trying  
8 to sell futures at 524 and 523.75, and then 523.5.

9 Q It looks like you're -- it looks like  
10 you're filling a bunch of sell orders in smaller  
11 increment, and then putting in significantly larger  
12 sell orders that you're canceling before any of them  
13 can execute, and then putting in buy orders the  
14 opposite side of the market and filling those buy  
15 orders.

16 MR. ASCHE: So is that a question?

17 A I don't think that's a question.

18 Q Well, that's what it appears from the  
19 data so...

20 MR. ASCHE: Is that a question?

21 A Is that the question?

22 Q So what were you doing?

23 A I already explained it to you.

24 Q What was --

25 A I'm trying to sell 302 futures at 524, and

1 MONCADA

2 Q After that long-winded explanation, I'm  
3 going to go ahead and mark this document as  
4 Exhibit 10.

5 (Court Reporter clarification at this time.)

6 MR. RIDENOUR: Exhibit 9 is -- oh, 7  
7 and 8?

8 (Exhibit marked Exhibit 9 for  
9 identification.)

10 Q So this is Exhibit 9, similar to  
11 Exhibit 6. This is an excerpt of trade data from  
12 the TT logs. This exhibit is an excerpt of  
13 WHEAT-AF-00016. It's an excerpt. It goes from  
14 record number 536206 to record number 53 -- I'm  
15 sorry 563554, produced at CFTC by Advantage.

16 MR. ASCHE: This is not the same format  
17 as the other one.

18 MR. RIDENOUR: Should be almost  
19 exactly. I mean, it should be, it's all the same  
20 columns.

21 MR. ASCHE: No, it's not.

22 MR. RIDENOUR: Sometimes the columns  
23 get slightly out of --

24 MR. ASCHE: No, it's completely  
25 different.

1 MONCADA

2 MR. RIDENOUR: Did I give you the right  
3 one? Richard, what's the Bates?

4 MR. MCCracken: He may have given you  
5 the wrong one.

6 MR. ASCHE: 00016.

7 MR. RIDENOUR: Yeah, that's it. The  
8 highlights came out much letter better on these  
9 other ones.

10 MR. ASCHE: Turn the page --

11 MR. RIDENOUR: 18?

12 MR. ASCHE: Yeah, if I just turn to  
13 page 10 as an example, stuff on these pages.

14 MR. RIDENOUR: So, yeah, okay, what it  
15 is -- it's actually three different sections.  
16 There's so many columns on it, that you couldn't  
17 print it off on all the columns appearing on one  
18 page.

19 MR. ASCHE: All right.

20 MR. RIDENOUR: So it's pages 1 through  
21 6 will be the first however many columns, pages 7  
22 through 12 will be the second set of columns, and  
23 pages 13 through 18 will be the final columns.  
24 Again, this is an excerpt where I filtered out  
25 anything, we're in field 47, as you can see on

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page --

MR. ASCHE: So it doesn't include any of the spreads.

MR. RIDENOUR: No Autospreaders.

MR. ASCHE: No Autospreaders.

MR. MCCracken: But the record number column on the far left should match with every page, so that you could keep track if you laid them out.

Q Mr. Moncada, have you had a chance to look at this?

A Yeah.

Q If you go on to the -- onto page 2, the second line on page 2 is buy order for 500 lots at 506.5 is the price, and it's record number 536595. And if you go down a few lines, record number 536608 -- oh, I'm sorry, a little further down, record number 536614, the 500 lot buy order was canceled approximately 1.3 seconds after it was originally entered.

Just looking at this, at this data, can you tell what your rationale would have been for entering that 500 lot order?

A I was trying to buy futures at 506.5.

Q And --



1 MONCADA

2 A Possibly so.

3 Q So you had a generally -- your view of  
4 the market was that the price would be moving up?

5 A Could be.

6 Q It could be, or it was?

7 A I don't recall exactly. I don't recall the  
8 exact situation, but it could be.

9 Q Why then were you putting in sell  
10 orders for five lots between when you put in that  
11 500 lot buy order and the 402 lot buy order?

12 A Sell orders were higher prices, so I was  
13 probably trying to buy at one price and sell on the  
14 another.

15 Q But you were unsuccessful at buying at  
16 the price of the large lot order?

17 A Yeah, it looks like I canceled it without  
18 getting filled.

19 Q I want to direct your attention over to  
20 page 4. Towards the top of the page record number  
21 559802, there's a buy order for 402 lots, and then  
22 approximately 7/10 of a second later that was -- the  
23 order was deleted after filling only one lot of a  
24 402 lot order.

25 Without getting too repetitive, can you

1 MONCADA

2 I focused a lot on currencies because of the dollar  
3 carry trade.

4 Q So what -- you're saying that movement  
5 in one market would impact whether or not you wanted  
6 to fill this order in the wheat market?

7 A Absolutely.

8 Q And you're -- what would you have been  
9 able to see and process and think through in 7/10 of  
10 a second that would make you decide to cancel that  
11 order?

12 A Gyration in other markets.

13 Q You're willing to take on 402 lots,  
14 which is a pretty substantial position, and  
15 you're -- but you're re-evaluating that in 7/10 of a  
16 second?

17 A Yeah.

18 MR. MCCracken: I'm sorry. Was that a  
19 yes?

20 THE WITNESS: Yes.

21 Q You're talking about currency  
22 gyrations, and movements in other markets. How many  
23 other markets are you -- are you comparing or  
24 judging your desire to fill this order against?

25 A I don't know the exact specific of this one

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order.

Q But just --

A I just know generally what I looked at, and I know generally that I look at all of the markets that have any relation to the grain trade and that includes currencies, that includes macro markets like gold, that includes U.S. equity indexes, that includes specifically the grains.

Q And what about those other markets are you evaluating?

A I'm looking at which way and how fast they're moving.

Q So you're looking at price swings in other markets?

A Absolutely.

Q And you're evaluating whether or not you want to fill a large lot order in the wheat market based off of price ratings and swings in those other markets?

A In addition to how I feel about the wheat market, yeah.

Q And you're evaluating all of that in less than a second?

A Probably. In this case, probably.

1 MONCADA

2 Q So you go from wanting to fill a 402  
3 lot order, to wanting to cancel a 402 lot order in  
4 7/10 of a second based off of your analysis of other  
5 markets?

6 A Yeah, in addition to intuition and feel of  
7 the market.

8 Q What sort of price swings are you able  
9 to monitor and evaluate in other markets in less  
10 than a second?

11 A Like I said, I look at the momentum and  
12 gyration of those markets.

13 Q Are these other markets so volatile  
14 that there could be a noticeable movement in 7/10 of  
15 a second that you would react to?

16 A Noticeable to me.

17 Q Do you know how long it is takes a  
18 human to process any amount of stimulus?

19 A No.

20 Q Do you know how long it takes a human  
21 to click a mouse?

22 A It could be done pretty quickly.

23 Q Do you know how long it takes for you  
24 to actually --

25 A No -- I don't.

1 MONCADA

2 Q -- change your mind on something?

3 A I don't know how long it takes me to change  
4 my mind, but I know I'm able to make quick  
5 decisions.

6 Q You're able to judge multiple different  
7 markets in 7/10 of a second and determine whether or  
8 not you want to or don't want to fill a 402 lot  
9 order in the wheat market?

10 A Yeah.

11 MR. RIDENOUR: Okay. We're going to  
12 move onto a new exhibit, and I anticipate that they  
13 will start getting a little bit faster.

14 What exhibit are we up to? This is  
15 actually 10. Okay. This is actually Exhibit 10.

16 (Exhibit marked Exhibit 10 for  
17 identification.)

18 Q I'll walk through this one quickly.

19 This is an excerpt from  
20 WHEAT-AF-000017, October 30th, 2009, from records  
21 359146 to 367866. And I again represent that this  
22 was from the TT logs produced by Advantage, and I  
23 filtered out all items where field 47 said order SRC  
24 equals Autospreader. All one word.

25 Mr. Moncada, and I think this one is

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2 based off the previous questions that we've had, we  
3 can go through this pretty quickly, but, you know,  
4 once again we're looking at a series of large lot  
5 buy orders that were immediately canceled.

6 Do you have any idea why you would have  
7 canceled, to start with the first one, 402 lots?

8 Any idea why you would have canceled  
9 that one approximately .7 seconds after it was first  
10 entered?

11 A Well, it looks here that the futures were  
12 trading slightly higher, so I put the order in, and  
13 it didn't get filled, and I decided to cancel it and  
14 move on.

15 Q And you're -- at the same time you're  
16 seeing a number of sell orders that you're putting  
17 in at higher prices, at 501.5?

18 A Yes. Well, that must be the price level I  
19 wanted to sell.

20 Q Two other 500 lot -- or two 500 lot  
21 orders on this page. They were each canceled, one  
22 at approximately .7 seconds, one at approximately .6  
23 seconds. You stated in prior testimony that you  
24 would have been re-evaluating the market.

25 Does this look like you had

1 MONCADA

2 re-evaluated the market.

3 MR. ASCHE: I don't think that's what  
4 his prior testimony was. And the question is --

5 Q Any idea what you were doing?

6 MR. ASCHE: -- does he know whether  
7 he's re-evaluating the market in this time frame?  
8 That's fine.

9 Q Do you know if you were re-evaluating  
10 the market in this time frame?

11 A I can't recall this exact instance, but it  
12 looks to me like there was a level at which I was  
13 willing to buy, tried to buy, didn't get filled,  
14 canceled my order, moved on, and tried to buy again,  
15 slightly cheaper.

16 Q So actually the first and the third  
17 large lot orders are both -- the price on those were  
18 both 499.25. Why would you enter two large lot  
19 orders when, in the course, they were at the same  
20 price and cancel both of them so quickly?

21 A Well, they didn't get filled, and I probably  
22 decided to move on and, again, decided to try to buy  
23 at that price again later on.

24 Q The second one in there, the price on  
25 that is 499.75, which is two ticks higher than the

1 MONCADA

2 first large lot order.

3 Do you know why you would have  
4 increased the price that you were willing to buy by  
5 two ticks?

6 A Maybe I was wanting to be more aggressive on  
7 buying. It looks like I decided I wanted a futures  
8 a little bit higher prices, and then decided no.

9 Q And then the third large lot order was,  
10 again, 499.25, so it was two ticks below where that  
11 second large lot order was.

12 Any idea on why you would have changed  
13 the price on that?

14 A Most likely I got a less -- I started feeling  
15 less and less like I wanted to pay 499.75, and I  
16 changed my mind.

17 Q Now, on all of those you canceled the  
18 large lot orders with no portion of them filled, all  
19 in 7/10 of a second less.

20 Would you have been -- or why -- what  
21 could you have reasoned to cause to you cancel those  
22 orders in such a short time frame?

23 A They didn't have the ability to get filled,  
24 and so I took -- I didn't have any interest in  
25 leaving an order out there that would possibly get



1 MONCADA

2 run through, so I canceled and waited for another  
3 time to buy.

4 Q You didn't want --

5 A That seems like a reasonable scenario here.

6 Q What do you mean, you didn't want to  
7 leave an order to get run through?

8 A When I place an order, a lot of times I want  
9 to -- I immediately buy there, or I want to wait and  
10 see what the markets does.

11 Q But you said "run through." What does  
12 that mean?

13 A It could have -- there's something could have  
14 happened in the other markets that would have caused  
15 futures to sell off and I -- I could have just  
16 decided I didn't want that many futures at that  
17 price and changed my mind.

18 Q You said that you would have been  
19 concerned that something would have happened in  
20 another market, and another market would have caused  
21 the price decrease in wheat?

22 A Possibly. That's a possibility.

23 Q And, again, in .7 seconds you made that  
24 evaluation?

25 A That's what it looks like I did.

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Q Well, once again the term "run through" that you just used. You said that you were worried about the order getting run through.

A I don't eye why I used that term. I don't even know what that means.

Q And what does that term mean?

A I don't really know what that means. I just -- I just got concerned that price was going to drop, and decided maybe to wait till a little bit lower price, and try to buy.

Q You just said "run through," though, I mean run --

A I just said I don't really know what that means. I don't know why I said it.

Q It sounds like you were saying that you were worried that the -- that that would get filled, that the orders on the opposite side could come in, and actually lift the holding, your large holding, lift all of your large lot order. So when you said "run through", and I just want to know what you meant by that.

A I just said -- told you, I don't know why I used that term. I don't know what it means. I don't -- it looks to me that I was willing to pay

1 MONCADA

2 40.99.75 (sic). I cancel the order, and I decided  
3 to wait for a slightly lower private. Obviously, I  
4 liked the price 499.25 at some point. It looks like  
5 I decided to try for that price again.

6 Q Why wouldn't you have used an iceberg  
7 order for that?

8 A Because if a large sell order had come in, it  
9 would probably be more likely that I would get  
10 filled putting an order with the size priority.

11 Q You're saying if a large order came in,  
12 you would have gotten a better fill if you had had  
13 an iceberg?

14 A No. Iceberg would have been less likely to  
15 get filled.

16 Q Why is that?

17 A Because if a large sell order came to the  
18 market, at the market, and touched my limit, I would  
19 be more likely to get a bigger partial fill with  
20 this order than I would with an iceberg order.

21 Q Would you have known what volume of  
22 orders there were at the price at which you put in  
23 that buy order?

24 A What you mean would I have known?

25 Q When you're looking at -- when you're

1 MONCADA

2 All right. We can go on to the next  
3 Exhibit. What exhibit are we on?

4 (Exhibit marked Exhibit 11 for  
5 identification.)

6 MR. RIDENOUR: It's also a short one.

7 Q Exhibit no. 11, Bates number is  
8 WHEAT-AF-000217. Trade date is 10/26/2009. This is  
9 for the BES account. Record number starts with  
10 712458, ends with record number 721537. This is an  
11 excerpt from full document WHEATAF217, which I  
12 filtered to remove from all items where field 47 has  
13 a value of order SRC Equals Autospreader.

14 All right. Mr. Moncada, the orders  
15 here, you'll see a 302 lot buy order. It's record  
16 715929, canceled approximately 7/10 of a second  
17 later. The price here is 537.75. The next entry,  
18 which is record 716 -- I'm sorry, 717248, is a buy  
19 order for 500 lots, which was canceled 7/10 of a  
20 second later, also at a price of 537.75.

21 Do you know why you would have put in  
22 two large lot orders and canceled them 7/10 of a  
23 second later at the same price?

24 A No, I don't know why.

25 MR. MCCracken: I'm sorry, I just

1 MONCADA

2 719368. That Exchange order ID is associated with a  
3 sell order that's the first item entered on this, on  
4 this excerpt. And if you look at the time stamp on  
5 that, that five lot sell order is sitting in the  
6 market for about a minute.

7 Why is it that you would leave that  
8 five lot sell order in the market for a minute while  
9 you cancel your large lot orders at 7/10 of a  
10 second?

11 A I don't know.

12 MR. MCCracken: I'm sorry.

13 A I don't know. I don't recall the situation,  
14 exactly this situation.

15 Q Would you leave -- how long would you  
16 normally leave orders live in the market?

17 A It depended on the order. Depended on the  
18 market.

19 Q For a five lot order like this, how  
20 long would you anticipate leaving it in the market  
21 if you were intended for it to fill?

22 A If it didn't fill right away --

23 (Court Reporter clarification at this time.)

24 A If it did not fill right away, I could cancel  
25 it right away, or I could decide to leave it in, or

1 MONCADA

2 A I'm not sure. I don't know why they would be  
3 different, but I could imagine that I was -- I would  
4 imagine I was hoping to buy a large number of  
5 futures at this price.

6 Q And then do what with them?

7 A Well, I would either keep -- decide to keep  
8 them or decide to sell them back out.

9 Q And under what circumstances would you  
10 decide to keep them?

11 A I could keep them if they go in my favor, and  
12 the market feels good, or I could decide to sell  
13 them back out if the market goes in my favor, and I  
14 want to take a profit, or I could decide if it goes  
15 against me I will exit the position and move on.

16 Q And if you executed a 500 lot order,  
17 and what -- what change in value is there in the  
18 value of one contract of CBOT wheat per tick?

19 Do you know?

20 A It's \$12.50 per tick.

21 Q And if you had a 500 lot order, and it  
22 fully executed, and it moved against you by a tick,  
23 what would that mean for your equity?

24 A It would go down by \$625.

25 Q Or is that 6,250?

MONCADA

A Oh, 500.

Q 500.

A Yeah, 6,250.

Q And if you decided to hold onto that order, how much margin would you have to post for that order?

A I don't know what the margin requirements were back then.

Q You said that the initial margin you thought was somewhere in the neighborhood of \$2,000 per contract, and then the maintenance margin was some discount thereof?

A That could have been -- that could have been close to the million dollar margin call, if I decided to hold it overnight -- or, sorry, a million dollars of margin if I decided to hold it overnight. If I decided to hold it overnight and didn't decide to spread it off in some way.

Q So in 7/10 of a second, with one of these orders on this page, you went from willing to fill an order that could, if you decided to hold onto it, mean that you would have to post somewhere in the neighborhood of a million dollars margin, 7/10 of a second you decided -- you went from, "I

1 MONCADA

2 want to do this," to "I don't want to do this."

3 Is that what you're saying?

4 A It's possible.

5 Q Is there any other reason that you  
6 would have canceled?

7 A You know --

8 MR. ASCHE: He's already given you  
9 several reasons. You want some additional ones  
10 other than what he's already given you? He said  
11 several times --

12 Q I want to know -- I want to know the  
13 universe. I want to know the universe.

14 A I've given you --

15 MR. ASCHE: He's given you several  
16 reasons.

17 Q And he's given me a lot of, "Well,  
18 possiblities." (sic)

19 So I want --

20 MR. ASCHE: Are there any other reasons  
21 other than what you've testified no?

22 A I don't have any other reasons.

23 Q Okay. So you would have canceled  
24 because either you would have changed your mind,  
25 based off of other macro market issues, or still was



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MONCADA

that -- I think that was the only reason.

MR. ASCHE: No, it wasn't.

Q What were the other reasons?

MR. ASCHE: He's not going to go over it again. It's 4:35. He's not going to keep answering the same questions with the same answers.

You have to look at the transcript if want to know what the prior answer is, or you can ask me.

MR. MCCracken: Are you as good as a transcript, Richard?

MR. ASCHE: No, but I'm not going to have the witness go back and reiterate prior answers.

Q All right. Let's move on to the next one.

MR. RIDENOUR: Exhibit 12.

(Exhibit marked Exhibit 12 for identification.)

Q So let me ask you a question about -- I guess let me mark this one for the record.

This is Exhibit 12, Bates number at the top it says excerpt from WHEAT-AF-000212. Trade date 10/14/2009. Goes from record number 409621 to

1 MONCADA

2 464167. This is trading in the BES account.

3 Mr. Moncada, I want to direct your  
4 attention to two orders that you had entered. I  
5 guess just generally speaking, we'll just take the  
6 first one. Buy order 202 two lots, 9:50:30.539  
7 seconds, record number 409621 is the first line  
8 there. This one wasn't canceled until 9:50:32.930  
9 seconds, four lines down, approximately 2.4 seconds.

10 Do you know why you would have left  
11 this large lot order in the market longer than some  
12 of the other ones that we've seen?

13 A Maybe I liked the market conditions a little  
14 bit longer.

15 Q And sometimes you've said that you  
16 didn't want to leave an order out there, but in this  
17 case it seems that you left your order on, not a  
18 particularly long time, but longer than at some  
19 other points.

20 Do you know why you would have left it  
21 on longer this time?

22 A It's we're talking about one second versus  
23 two and a half seconds. I was probably just liking  
24 the market conditions a little bit longer.

25 Q And then you'll notice approximately

1 MONCADA

2 four seconds after that first one was canceled, you  
3 entered another 202 buy order at the exact same  
4 price, record number 410588, and that that one you  
5 canceled approximately 9/10 of a second later.

6 Again, why would you have left the  
7 order in the market for two-and-a-half seconds then  
8 canceled it, and then four seconds later put another  
9 one in at the exact same price?

10 A I might have changed my mind. I'm not really  
11 sure. It looks like I liked the price, I took it  
12 out because I wanted to re-evaluate for a sec, put  
13 it back in, didn't like it again.

14 Q So you changed your mind about changing  
15 your mind?

16 A Yeah, it's possible.

17 Q Okay. All right. I'm going to mark  
18 this as Exhibit 13.

19 (Exhibit marked Exhibit 13 for  
20 identification.)

21 Q Bates number at the top of this is --  
22 this is an excerpt from WHEAT-AF-000207. Trade date  
23 10/6/2009. Again, record number 570027 going  
24 through record number 582353. Excerpt from trade  
25 data 10/6/2009 and in the BES account.

1 MONCADA

2 I want to draw your attention to the  
3 first large lot order. The first -- the first  
4 record on here was a buy order for 500 lots at 462.  
5 It's record number 570027. Then approximately 2.4  
6 seconds later you added a second buy order for 225  
7 lots at 462.25.

8 Why would you have had two large orders  
9 working at the same time?

10 A I don't really know.

11 Q Would you have intended to execute all  
12 of those orders?

13 A If I put them out there on the screen, I  
14 would have -- I would have been comfortable with the  
15 risk of having both orders filled.

16 Q That's different than actually  
17 intending to execute.

18 Would you have been intending to  
19 execute that full --

20 MR. ASCHE: Object to the form of the  
21 question.

22 Q -- order?

23 MR. MCCracken: You can still answer.

24 MR. ASCHE: Can you answer the question  
25 about your intent?

1 MONCADA

2 A I don't really know what my intent was in  
3 this specific instant.

4 Q These two orders together are for 725  
5 lots.

6 A Yes.

7 Q Previously we talked about the amount  
8 of margin that would be required if you would have  
9 taken overnight 500 lot order, I guess, let's not  
10 tax our brains on math, but the margin requirement  
11 for 725 lots would be even greater, correct, if you  
12 took it overnight?

13 A If I took it overnight, yes.

14 Q Okay. I'm going to move onto -- I'm  
15 going to mark this as Exhibit 14.

16 (Exhibit marked Exhibit 14 for  
17 identification.)

18 Q The first page of this starts off with  
19 a sell order for 500 lots at 532. It's record  
20 number 1 -- actually, hold on. Let me introduce the  
21 exhibit. This is marked at Exhibit no. 14. It's an  
22 excerpt from document WHEAT-AF-000013. Trade date  
23 10/26/2009 for the Serdika account. It goes from  
24 record number 1294050 through 1301348.

25 Mr. Moncada, the first item on this

MONCADA

sheet is a 500 lot sell order at 532.

Do you see that?

A Uh-huh.

Q Yes?

A Yes.

Q And this order was canceled  
approximately one second later.

Do you see that?

A Yes.

Q The next item after the cancellation of  
the 500 lot sell order is a 20 lot buy order. This  
20 lot buy order is at record number 1300892.

If you look at the right-hand column,  
order res, there are a number of entries. The  
first -- the first one associated with that large  
lot order column says GTD.

Is that your understanding that that  
would mean good till day?

A Yes.

Q The 20 lot order on the buy side that I  
just referred to, the order res. entry for that says  
"iceberg."

Do you know or can you tell from this  
if that was a -- if that order was entered as an

1 MONCADA

2 Q Okay. So --

3 A I used the iceberg sometimes. I decided not  
4 to use it other times. I don't know of the exact  
5 situation on why I would do that, but...

6 Q But you wanted the market to see the  
7 full 500 lots of your order?

8 A I don't remember the situation. I don't  
9 know. I can't speculate on what I wanted the market  
10 to do.

11 Q But you wanted the market to see. It's  
12 not a question of what you wanted the market to  
13 react to, but you wanted the market to see the full  
14 500 lot orders, correct?

15 A Well, most of my orders are without using  
16 iceberg, so I don't want the market to see all my  
17 orders.

18 Q No. In this situation for that 500 lot  
19 order, you wanted the market to see the full 500  
20 lots, correct?

21 A I don't know exactly what I was trying to do.  
22 You've given me a snapshot of a couple of minutes.  
23 I don't know what I did after.

24 Q If you had not wanted the market to see  
25 the entire 500 lots of the order, would you have

1 MONCADA

2 used an iceberg?

3 A I don't use iceberg very often.

4 Q Here's a situation where you used an  
5 iceberg at the same time that you were putting in a  
6 500 lot order. So it's obvious that at this point  
7 in time you're at least thinking about using  
8 icebergs, so why didn't you use an iceberg for your  
9 large order, but you used it for your 20 lot order?

10 A I don't know. Again, I don't know what the  
11 situation was in the market here.

12 Q Are you trying to signal the market in  
13 any way with this 500 lot order?

14 A I wouldn't be able to answer that. I don't  
15 know. I don't know what I was trying to do.

16 Q Are you trying to -- are you trying --  
17 are you using that 500 lot order trying to help that  
18 20 lot iceberg fill?

19 A It looks to me that was one of the -- that I  
20 was willing to buy and sell. I was willing to buy  
21 below and sell little bit higher.

22 MR. MCCracken: Mr. Moncada, you  
23 understand just repeating the data back to us is not  
24 an answer, don't you?

25 MR. ASCHE: Is that a question?



1 MONCADA

2 So we need you to say --

3 MR. ASCHE: All right --

4 Q Give possible reasons --

5 MR. ASCHE: That's it. That's it.

6 You're not to go ask him the same question again  
7 with a pre-ample. He told you that he can't answer  
8 the question, move on and ask another question or  
9 terminate the deposition, but you can't ask the same  
10 question a hundred times. He's given you an answer.  
11 If you don't like his answer, fine. If you do like  
12 his answer, also fine.

13 MR. RIDENOUR: I think we are towards  
14 the end. Three more that I hope to do in rapid  
15 success.

16 Q I'll mark this as Exhibit 15.

17 (Exhibit marked Exhibit 15 for  
18 identification.)

19 Q Okay. This is an excerpt from document  
20 WHEAT-AF-000014. Trade date 10/27/2009 in the  
21 Serdika account beginning with record number  
22 1474745, ending with 1548830.

23 Mr. Moncada, just, again, you know,  
24 there's some large lot orders in here. I want to  
25 direct your attention to page 3, unfortunately I did

1 MONCADA

2 not get all of this on the same page, it's a little  
3 bit more difficult to follow. If you look at pages  
4 1 and 3 side by side. It would probably be the  
5 easiest, if you want to take the staple off. The  
6 column order res, wound up being on page 3 rather  
7 than page 1, but I want to point you down to an  
8 order where on the -- on page 1 you'll see it's  
9 order quantity 102 lots. And that is record number  
10 1546924. If you look at page 3 with the same order  
11 number, it shows that the order res. entry is  
12 iceberg. This -- I guess, I'll just ask you why, to  
13 the best of your recollection, would you have used  
14 an iceberg order type for this 102 lot order?

15 A I have no -- again, I have no idea of the  
16 circumstance. I don't know why I would use an  
17 iceberg order.

18 Q At the top of the page, first line, is  
19 a buy order of 302 lots, a price of 507. Canceled  
20 approximately .6 seconds later.

21 Do you know why you would have canceled  
22 this order within 6/10 of a second?

23 A It appears that I could have changed my mind,  
24 or I just didn't want to leave the order out there.

25 Q And the reasons that you would have

1 MONCADA

2 changed your mind, would those be the same reasons  
3 we discussed earlier?

4 A Yeah, general market reasons.

5 Q You have no specific recollection of  
6 orders on this day or these orders?

7 A No.

8 Q And move over to -- we're going to mark  
9 as Exhibit 16.

10 (Exhibit marked Exhibit 16 for  
11 identification.)

12 Q This is an excerpt from document  
13 WHEAT-AF-000215, trade date 10/19/2009 in the BES  
14 account beginning with record number 128983, going  
15 through record number 134705.

16 Mr. Moncada, you see about halfway down  
17 the page there is a 500 lot order. There's, I  
18 guess, at the top of the page there's a 500 lot  
19 order, and then this order seems to have been  
20 replaced and then deleted.

21 Do you see that --

22 A Yeah.

23 Q -- on the first page?

24 A Yeah.

25 Q Okay. And then it appears actually

1 MONCADA

2 simultaneous with the deleted order another 500 lot  
3 order was entered. Does -- and the difference, I  
4 guess, one of -- the first lot -- the first 500 lot  
5 order the original price was 509, then it was  
6 replaced with one at 509.25. The 500 lot order at  
7 509.25, if you see just past halfway down the page  
8 appears to have been partially filled with two lots.

9 Do you see that? Two single lot fills?

10 A Yes.

11 Q Yes?

12 A Yes.

13 Q And approximately 3/10 of a second  
14 later you look over at the date and time, the  
15 remaining 498 lots was canceled.

16 Do you know why you would have canceled  
17 the remaining 498 lots in this order?

18 A It could have been a number of reasons  
19 including the market, what the markets were doing.

20 Q Do you have any specific recollection  
21 of these trades, or any other large lot orders you  
22 placed on this date?

23 A No, I don't.

24 Q And we're going to go to Exhibit 17  
25 now.

1 MONCADA

2 (Exhibit marked Exhibit 17 for  
3 identification.)

4 Q Exhibit 17 is an excerpt from  
5 WHEAT-AF-000210, trade date 10/12/2009 in the BES  
6 account, starting at record number 266202, going  
7 through record 306257.

8 Mr. Moncada, first line on here is a  
9 buy order for 500 lots at 484.5, and it appears to  
10 have been deleted or canceled approximately 6/10 of  
11 a second later.

12 Do you know why you would have canceled  
13 that large lot order?

14 A Most likely the same reasons as before, but I  
15 don't really recall this example specifically.

16 Q Approximately 11 seconds after that  
17 first large lot order was canceled, you entered  
18 another one for 200 lots at a price one tick below  
19 where the first one was entered, and that order was  
20 canceled approximately 1.3 seconds later.

21 Any idea why you would have entered a  
22 new order 11 seconds later and then canceled it?

23 A The market could have given me a reason to  
24 want to buy it at a slightly lower price.

25 Q Do you know why you would have canceled

Moncada

Q When was the last time you spoke  
to him?

A I spoke to him last weekend.

Q Do you know where he is located?

A He is in New York.

Q Do you know if he is still  
trading futures?

A I don't believe he is trading  
futures.

Q You said that you weren't quite  
sure when he would have started at BES. Do  
you have an idea on the timeframe?

A I think it was early 2009.

Q And is there someone with the  
last name Moriarty?

A Yes. James Patrick Moriarty.  
He is known as Patrick.

Q Which entities did he trade for?

A He traded for Serdika.

Q Did he also trade for BES?

A No.

Q Do you know when he started at  
Serdika?

A He started around the same time

Moncada

I did.

Q Early 2009?

A He started around the same time

I did, 2007.

Q Sorry, BES was 2009.

Do you know if or how long he  
was with Serdika?

A No, I don't know when he left.

Q Was it after you left?

A I believe so, yes.

Q How long have you known Mr.  
Moriarty?

A Since 2007.

Q When was the last time you spoke  
to him?

A I spoke to him yesterday.

Q Do you know where he is located?

A Somewhere in upstate New York.

Q You said you spoke to him  
yesterday. What did you speak to him about?

A I spoke to him about trying to  
get together and have dinner. He is a  
friend of mine.

Q Do you know if he is still

Moncada

Q What discussions did you have with him?

A We talked about different trading ideas and different approaches to trading wheat.

Q And did you discuss specific trades that you were placing in wheat?

A Sometimes we did, yes.

Q Mr. Brandeis, did you discuss specific trades that you were placing in the wheat market?

A Yes, we discussed all trades.

Q Back in October of 2009, did you ever place orders in the BES account and the Serdika account trying to move positions between those two accounts?

A I had offsetting positions in both accounts, and we had expiration risk, and I tried to move some trades over and was told it wasn't possible, and I closed the trades out by offsetting them.

Q How would you close out those positions by offsetting them?

A I put orders into the market in



1                                   Moncada

2       one account and put orders in the market in

3       another account and closed out the

4       positions.

5           Q       So you put a buy order in one

6       account and a sell order in the other

7       account?

8           A       Correct.

9           Q       And those would be for the same

10       quantity?

11          A       It would be for the quantity

12       that I wanted to get out of in that

13       position.

14          Q       And the offsetting orders would

15       be at the same price?

16          A       Sometimes they were the same

17       price, sometimes they were a very close

18       price to each other.

19          Q       Sometimes a close price; is that

20       what you said?

21          A       Yes.

22          Q       And did you say something at the

23       end of that?

24          A       No.

25                   MR. ASCHE: He said "close price

1 Moncada

2 to each other."

3 Q Is that correct, Mr. Moncada,  
4 you put in a price close?

5 A Yes.

6 Q By close do you mean one tick  
7 apart?

8 A Close. I don't know exactly  
9 what it was.

10 Q Do you know how many times you  
11 put in orders or offsetting orders in your  
12 BES and your Serdika account in October of  
13 2009?

14 A I don't know how many times in  
15 October, no.

16 Q Do you know how many times you  
17 did that overall?

18 A I think it was around ten or 12.

19 Q Were those trades in the wheat  
20 market, the CBOT wheat market?

21 A Yes.

22 MR. RIDENOUR: I want to  
23 introduce an exhibit right now. I'm  
24 going to mark this as Exhibit 18. Just  
25 take a look at that for a moment. I'll

Moncada

Moncada, but all market activity. This excerpt is from time 10:29 and 9.476 seconds to 10:20 and 10.944 seconds.

Q Mr. Moncada, have you had a chance to review this?

A Yes.

Q The first line of this excerpt shows an order to buy 80 lots in the Serdika account at a price of 466. Do you see that?

A Yes.

Q And a little past halfway down the page there is an 80 lot order to sell in the BES account also at 464. Do you see that?

A Yes.

Q Does it look like this is an example of when you were trying to move a position from the BES account to the Serdika account?

A It looks like I was trying to close out the position in the accounts, yes.

Q Does it look like you were trying to have the order in the BES account match against the order in the Serdika

1 Moncada

2 account?

3 A Yes, it does.

4 Q Seeing the fills towards the  
5 bottom of the page, in particular a 46 lot  
6 fill, does it appear to you that at least a  
7 large portion of the BES order was filled  
8 against the Serdika order?

9 A It looks like some of the order  
10 was filled against the Serdika order, yes.

11 MR. RIDENOUR: I'm going to mark  
12 another document. This one is  
13 Exhibit 20. Just take a look at that.

14 (Four-page spreadsheet was  
15 marked as Plaintiff's Exhibit 20 for  
16 identification, as of this date.)

17 MR. RIDENOUR: Exhibit 20 is an  
18 excerpt from the top-left corner says,  
19 "Excerpt masked underscore ZWZ9  
20 underscore 10122009." Again, this is  
21 an excerpt for CME data produced to the  
22 Commission that has been anonymized to  
23 Mr. Moncada's trading and produced to  
24 defendants on April 30th. This excerpt  
25 runs from confirmation time 12:27 and

1 Moncada

2 that new order in the Serdika account, do  
3 you see the number of fills or a series of  
4 fills of both of those orders?

5 A Yes.

6 Q And does it appear that most if  
7 not all of each of those 116 lot orders was  
8 filled against the other?

9 A Yes.

10 Q Do you believe that this is one  
11 of those examples of you trying to move an  
12 account or move a position from your BES  
13 account to the Serdika account?

14 A I was trying to close out the  
15 position in the account, yes.

16 Q Were you trying to place those  
17 orders to have them filled against each  
18 other?

19 A Yes.

20 MR. RIDENOUR: And lastly I'm  
21 going to put in Exhibit 21. Exhibit 21  
22 on the top-left corner says excerpt  
23 from masked underscore ZWZ9 underscore  
24 10292009. This is again an excerpt  
25 from CME data produced to the

1 Moncada

2 quarter. And then there is a series of  
3 fills of both of these orders. Do you see  
4 those fills?

5 A Yes.

6 Q Looking at this, do you see --

7 MR. McCracken: Page 13.

8 MR. RIDENOUR: Yes, on page 13  
9 there is a series of fills.

10 Q Does it appear that this is an  
11 instance of you trying to move a position  
12 from BES to Serdika?

13 A Yes, yes.

14 Q Were you trying to have the two  
15 orders filled against each other?

16 A Yes, I was trying to close the  
17 position out on both sides.

18 Q Were you trying to have those  
19 orders filled against each other though?

20 A Yes.

21 Q You said that you were trying to  
22 close out positions because of expiration  
23 risk.

24 A Sometimes it was because of  
25 expiration risk. Sometimes we had open

Moncada

about halfway down the page there is a new order entered for 271 lots. There is a buy order in account A4858, which is the Serdika account at a price of 499.

A What page are you on?

Q It's on page eight.

A Okay.

Q Do you recall placing these orders?

A Not specifically, no.

MR. ASCHE: You have to keep your voice up.

A I don't exactly recall the situation.

Q If you look, it winds up being offsetting orders, both for 271 lots, both with a price of 499 with the sell order in the Serdika account and the buy order in the BES account. Would that be one of the times that we just discussed where you had placed offsetting orders in the two accounts?

A It looks like it could have been.

Q Can you think of any other

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reason why you would have put in orders,  
offsetting orders at the same price and the  
same quantity?

A No.

Q If you look down the rest of  
page eight and page nine there is a series  
of fills with a function name on this trade  
which makes it easy to spot, and the 271  
lots of both orders appears to be fully  
executed, including a 100 lot fill and a 63  
lot fill that appear in both accounts.  
Looking at this, does it appear that most if  
not all of your order in one account was  
filled against the other order?

A Yes, it does.

Q Were you trying to have each  
order filled against the other order?

A I was trying to close the  
position.

Q But were you trying to have  
those orders hit each other?

A It looks like it. It looks like  
I was just trying to get out of the risk and  
size.



1 Moncada

2 Q But the way that you were doing  
3 that was by trying to fill the order in the  
4 BES account against the order in the Serdika  
5 account, correct?

6 A It looks like it.

7 MR. McCracken: Is that a yes?

8 THE WITNESS: I said it looks  
9 like it, yes.

10 MR. RIDENOUR: I'm going to mark  
11 this document as Exhibit 19. This is a  
12 one-page spreadsheet. I'll explain it  
13 in just one second.

14 (One-page spreadsheet was marked  
15 as Plaintiff's Exhibit 19 for  
16 identification, as of this date.)

17 MR. RIDENOUR: This document,  
18 top-left corner is marked excerpt from  
19 masked underscore ZWZ9 underscore  
20 10062009. I will represent that this  
21 is an excerpt from the file that was  
22 produced over to the defendant with the  
23 same Bates number, and it's just an  
24 excerpt of all market activity, not  
25 just as with the last one, not just Mr.

1 Moncada  
2 order to buy in the BES account for 154 lots  
3 at a price of 504 and a half. Do you see  
4 that?

5 A That's the Serdika account,  
6 right?

7 Q The first line.

8 A That's BES, yes.

9 Q So it's a buy order in the BES  
10 account. About halfway down that page do  
11 you see a sell order in the Serdika account  
12 for 154 lots at 508?

13 A Yes.

14 Q If you flash forward to the  
15 bottom of page 12, do you see the second and  
16 third lines from the bottom there is a  
17 cancellation of the order from the BES  
18 account, a reposting of that order basically  
19 instantaneously at a price of 508 and a  
20 quarter. Do you see that?

21 A Yes. There is a price change.

22 Q Back to where the order was in  
23 the Serdika account, that was to sell at  
24 508. So then we are looking at one order to  
25 sell at 508, one order to buy at 508 and a

1 Moncada

2 civil procedure.

3 Mr. Moncada, do you have to  
4 clarify anything that you said today or  
5 yesterday?

6 MR. ASCHE: I may ask him a few  
7 questions to clarify.

8 MR. RIDENOUR: Go ahead and ask  
9 your clarifying questions.

10 EXAMINATION BY

11 MR. ASCHE:

12 Q Mr. Moncada, prior to yesterday,  
13 had you reviewed any of the documents  
14 produced by the plaintiff in connection with  
15 your trading in October of 2009?

16 A No.

17 Q Or refresh your recollection  
18 with any documents of any kind?

19 A No.

20 Q Do you have any specific  
21 recollection of trades in October of 2009?

22 A No, not from that time period,  
23 not specifically.

24 Q You were asked why you would  
25 leave on a five lot order for a minute at

1 Moncada

2 capacity to be able to know whether  
3 that's possible.

4 MR. ASCHE: You object only to  
5 the form of the question?

6 MR. McCracken: Well, I object  
7 to the question. I object to the form  
8 of the question. He already previously  
9 testified he doesn't know whether that  
10 is possible.

11 MR. ASCHE: That's an example of  
12 the kind of speaking objection that Mr.  
13 McCracken objected to yesterday.

14 MR. McCracken: It is. I  
15 figured I can get a few in, too.

16 THE WITNESS: I'm allowed to  
17 clarify.

18 MR. McCracken: You certainly  
19 can, and we're allowed to object.

20 MR. ASCHE: You're not part of  
21 this conversation, so just answer the  
22 question.

23 THE WITNESS: What was the  
24 question?

25 Q If there is a buyer or a seller

1 Moncada

2 with a big order to fill, could it be done  
3 in less than a second?

4 MR. McCracken: Lacks  
5 foundation.

6 A The market moves in -- at that  
7 time it was moving in milliseconds. The  
8 computer algorithms that were there to trade  
9 could move in hundreds of a second. People  
10 were locating servers close to the exchange  
11 so they can trade faster and faster at the  
12 time.

13 Q So is the answer yes?

14 A The answer is yes.

15 Q Now, you gave one reason for  
16 cancelling orders in a very quick fashion  
17 was that you might have seen adverse market  
18 news in some other commodity or in some  
19 other arena that caused you to change your  
20 mind. Do you recall that testimony?

21 A Yes.

22 Q Do you have any specific  
23 recollection of that happening in October of  
24 2009?

25 A Of what happening?

1 Moncada

2 Q With a large lot order?

3 A A large lot order is more  
4 pronounced.

5 Q So I guess just to put it in a  
6 little bit more of a concrete example, let's  
7 say that you have a buy order of 200 lots  
8 and the price is 100, and when you are  
9 talking about the market moving against you  
10 what would that mean?

11 A If the market goes through 100  
12 and continues to go down you're subject to a  
13 lot of downside, whereas if the market never  
14 touches 100 and continues to go up you don't  
15 get filled and you get no upside.

16 Q Why would you be putting in a  
17 large lot order in that case at all?

18 A I would put it in with the  
19 intention of hopefully being filled from  
20 some order flow. If there was back and  
21 forth order flow and I got filled possibly  
22 that would be a position I would be happy to  
23 take, but I'm not going to leave the order  
24 out there for somebody to possibly take  
25 advantage of or lean against. I'm prepared

1 Moncada

2 to make a decision on the market at that  
3 moment and then change my mind, cancel and  
4 reevaluate.

5 Q When you said that you're not  
6 going to leave it out there for someone else  
7 to take advantage of, what do you mean by  
8 that?

9 A I mean if people sense that  
10 general weakness in the market and you have  
11 an order out there, it could be an order  
12 that somebody else finds, you know, as an  
13 advantage to take because it's an order that  
14 is a little mispriced.

15 Q You would be worried about  
16 leaving a large lot order in the market  
17 because someone would want to take advantage  
18 of it?

19 A Because it could be a mispriced  
20 order.

21 Q How would it be mispriced?

22 A Based on the market conditions,  
23 based on the market factors.

24 Q What would you consider a  
25 mispriced order to be?

1 Moncada

2 out of that trade.

3 Q So that is why you would have  
4 cancelled it before it got filled, so you  
5 wouldn't have someone lean against you?

6 A No. Generally what we want to  
7 do is when I want to take a position in the  
8 market I want to take a position at that  
9 price at that moment. If that's not going  
10 to get filled I'm not going to leave my  
11 order out there so somebody could take their  
12 time and decide what they want to do. I  
13 choose to trade at that moment at that  
14 price. If I don't get filled I'm going to  
15 cancel my order and look for another spot to  
16 trade.

17 Q So you choose to trade at that  
18 moment and at that price, and if you're not  
19 filled in less than a second you would  
20 consider that stale; is that what you would  
21 consider a stale order?

22 A It was a strategy that I had  
23 employed in 2009, and that was a  
24 possibility, yes.

25 Q So is your answer that the



CERTIFICATE OF OFFICER

I, THERESA L. TIERNAN, A Notary Public and  
Certified Court Reporter, do hereby certify that prior  
to the commencement of the examination,

E R I C M O N C A D A

was sworn by me to testify the truth, the whole truth  
and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing  
is a true and correct transcript of the testimony as  
taken stenographically by and before me at the time,  
place and on the date herein before set forth.

I DO FURTHER CERTIFY that I am neither a  
relative nor employee nor attorney nor counsel of any  
of the parties to this action, and that I am neither a  
relative nor employee of such attorney or counsel, and  
that I am not financially interested in the action.



THERESA L. CARIDDI TIERNAN

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